

# **TRIBAL STUDIES IN INDIA: INTERDISCIPLINARY PERSPECTIVES AND APPROACHES**

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**Lecture34**

## **Lecture 34:Constitutional Provisions, Protective Discrimination & Welfare of Tribes in India:Part-II**

Thank you. Good morning and welcome back to the lecture series on tribal studies in India: interdisciplinary perspectives and approaches. So, today we are going to look at the constitutional provisions, protective discrimination, and the welfare of the tribes in India. We will continue with our discussion from the previous lecture. Now, talking about land and forest rights of the tribals, we have to understand some of the provisions in Schedule 5 and Schedule 6.



Schedule 5 and Schedule 6 in the Indian Constitution have specific provisions for land protection in scheduled and tribal areas. Under Schedule 5, Article 244(10), the governor may make the following regulations regarding land in a state which comes under a scheduled area. First of all, there can be a prohibition or restriction of the transfer of land by or among members of the Scheduled Tribes in such an area. Next, regulating the allotment of land to members of the Scheduled Tribes in such an area.

## LAND AND FOREST RIGHTS

- Schedule V and Schedule VI in the Indian Constitution have specific provisions for land protection in Scheduled and tribal areas.
- Under Schedule V [Article 244 (10)], the Governor may make the following regulations regarding land in a state which comes under a Scheduled Area—
  - a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
  - b) regulate the allotment of land to members of the Scheduled Tribes in such area;



Further, regulating the carrying on of business or conducting of business as moneylenders by persons who lend money to members of the Scheduled Tribes in such an area. Under Schedule 6, Article 244(2) and 275(1), the regional and district councils have the power to make laws with respect to the following. A. Allocation, occupation, or utilization of land, excluding the reserved forests, for purposes such as agriculture,

- c) regulate the carrying on of business as money-lenders by persons who lend money to members of the Scheduled Tribes in such area.
- Under Schedule VI [Article 244(2) and 275(1)], the regional and district councils have power to make laws with respect to the following -
    - a) Allocation, occupation, or utilisation of land (excluding reserved forests) for purposes such as agriculture, grazing, residential, or other non-agricultural activities that benefit village or town residents.



Grazing, residential, or other non-agricultural activities that benefit the village or town residents. Next, management and oversight of forests, except for those classified as reserved forests. Next, usage of canals or water bodies for agricultural purposes. Next, Regulation of jhum or shifting cultivation and similar agricultural practices.

- b) Management and oversight of forests, except those classified as reserved forests.
- c) Usage of canals or water bodies for agricultural purposes.
- d) Regulation of jhum (shifting cultivation) and similar agricultural practices.
- e) Formation of village or town councils and defining their authority and responsibilities.
- f) Governance matters related to village or town administration, including law enforcement, public health, and sanitation.



Further, formation of village or town councils and defining their authority and responsibilities. Next, governance matters related to village or town administration, including law enforcement, public health, and sanitation. Next, appointment procedures and succession rules for chiefs or village headmen. Further, laws that govern inheritance and property rights. Next, recognition and regulation of social customs and traditions.

So, we see that all these land rights are provided under Section 3 of the Forest Rights Act, which was formulated in the year 2006. Next, talking about the usage of land, the indigenous communities have rights related to the occupation and use of land. The Shiroor tribes and other traditional forest dwellers have the right to reside on forest land under individual or collective ownership. They are also entitled to cultivate land for their livelihood and sustenance. From here, we move to community rights.

- Scheduled Tribes and Other Traditional Forest Dwellers have the right to reside on forest land under individual or collective ownership.
- They are also entitled to cultivate land for their livelihood and sustenance.

**Community Rights**

- Traditional forest dwellers can exercise their customary community rights, such as 'nistar' and similar rights recognised during historical regimes (Princely States, Zamindari, etc.).
- These rights include access to shared resources and communal lands.



The traditional forest dwellers can exercise their customary community rights, such as Nistar. Nistar is a term they use, which includes access to shared resources and communal lands, as well as similar rights recognized during the historical regimes of

princely states and the zamindari system. The rights extend to using water bodies for fishing and accessing seasonal resources for pastoral needs. Indigenous communities also hold tenure rights over their habitat and are entitled to formalize the pattas, or land records, issued by local or state authorities. The law enables the conversion of forest villages into revenue villages to formalize their administrative status.

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The community conserving forests has the legal right to do so. They retain all traditional rights except those of hunting, trapping, or harvesting wildlife parts. Talking about Joint Forest Management, the Joint Forest Management Program (JFM), which was a shaped program or which was formulated in 1990, was another attempt to create a partnership between forest departments and rural users of forest resources in order to regenerate degraded forest land.

JFM, or Joint Forest Management, provides rights to Sherul tribes and other forest-dependent communities to maintain their traditional forest rights, allowing them to use forest resources and contribute to conservation efforts. Regarding the ownership of minor forest produce, forest dwellers have legal ownership over minor forest produce they have traditionally collected within and outside tribal villages. This right extends to accessing, collecting, using, and disposing of such produce. This right enables people to gather, use, and sell resources such as bamboo, honey, medicinal plants, bark, brushwood, leaves, and roots. All these natural, organic resources of forests

### Ownership of Minor Forest Produce

- Forest dwellers have legal ownership over minor forest produce that they have traditionally collected within and outside the tribal villages.
- This right extends to access to collect, use and dispose of such produce.
- This right allows them to gather, use, and sell resources like bamboo, honey, medicinal plants, wax, brushwood, leaves, and roots.



Can be used by the tribals as sell resources. They can be sold, and an economy can be made out of that. Coming to the rehabilitation and protection from displacement, we see that the scheduled tribes or traditional forest dwellers displaced illegally before December 13, 2005, are entitled to rehabilitation. They have the right to rehabilitation, including alternate land provisions. These rights are applicable to both individuals as well as entire communities, with allocations that are determined by the government or Gram Sabha, in other words, the village council.

### Rehabilitation & Protection from Displacement

- Scheduled Tribes or traditional forest dwellers displaced illegally before December 13, 2005, are entitled to rehabilitation, including alternate land provisions.
- These rights are applicable to both individuals and communities, with allocations determined by the government or Gram Sabha (village council).
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides for comprehensive resettlement for the people affected by external projects disrupting organic habitat.



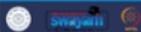
So, the village council or the government can determine. And allocate them, you know, these rights and alternate land provisions. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act in the year 2013 provides for comprehensive resettlement for the people that are affected by external projects disrupting organic habitats. So, the Land Acquisition Law of 2013, which replaces the Land Acquisition Act of 1894, encompasses the scheduled tribes and those that are covered by the Forest Rights Act, and it considers the possibility of involuntary displacement from land and habitat. This law, the Land Acquisition Law, expressly

provides for acquisition for private companies as well as projects to be executed through public-private partnerships.

**Land Acquisition Law (2013)**

- The Land Acquisition Law (2013) replacing the Land Acquisition Act, 1894 encompasses the Scheduled Tribes and those covered by the Forest Rights Act, and considers the possibility of involuntary displacement from land and habitat.
- This law expressly provides for acquisition for private companies and for projects to be executed through public-private partnership.
- It was enacted to ensure fair compensation, rehabilitation, and transparency in the process of land acquisition.
- This law is aimed at protecting the rights of the affected communities while also balancing developmental needs.



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So, the Land Acquisition Law was enacted as a way of ensuring fair compensation, rehabilitation, as well as transparency in the process of land acquisition. This law is aimed at protecting the rights of the affected communities while also balancing developmental needs. Next, we are going to talk about PESA, Panchayat's extension to scheduled areas. We will look at the different provisions of PESA. Scheduled areas are rich in natural resources and vegetation, and as such, they are susceptible to encroachment from, you know, the outsiders, the non-tribals, which results in illegal mining as well as forest felling, and they can very well adversely affect the customs and livelihoods of tribal communities and forest dwellers. They can actually disrupt.

The natural ecosystem, the natural habitat of the local people. To protect the rights, customs, and livelihoods of the communities residing in Shirul areas, provisions of the Panchayat's Extension to the Shirul Areas Act 1996, or PESA, were enacted. So, the provision extended Part 9 of the Constitution to the Scheduled 5 areas. Part 9 of the Indian Constitution deals with panchayats, providing for local self-government at the rural level. The panchayats at various levels and the Gram Sabha, or village council, are endowed with the following rights or powers and authority.

## Provisions of Panchayats Extension to Scheduled Areas (PESA)

- Scheduled Areas are rich in natural resources and vegetations and as such are susceptible to encroachers resulting in illegal mining and forest felling, which could adversely affect customs and livelihoods of tribal communities and forest dwellers.
- To protect the rights, customs and livelihoods of communities residing in Scheduled Areas, Provisions of the Panchayats Extension to the Scheduled Areas Act, 1996, (PESA) was enacted.
- The provision extended Part IX of the Constitution to the Scheduled V areas.



A. The authority to prevent land alienation in Shidule areas and take necessary measures to address such issues. B. They have the power to reclaim land that has been unlawfully taken away from members of Shidule tribes. C. They have rights over the ownership and management of minor forest produce. D. They have the ability or power to enforce prohibition or regulate the sale and consumption of intoxicating substances. E. They have control over money-lending practices that are affecting and have historically affected the Scheduled Tribes.

- Part IX of the Indian Constitution, deals with "The Panchayats," providing for local self government at rural level.
- Panchayats at various levels and the Gram Sabha are endowed with:
  - a) Authority to prevent land alienation in Scheduled Areas and take necessary measures to address such issues.
  - b) Power to reclaim land that has been unlawfully taken from members of Scheduled Tribes.
  - c) Rights over the ownership and management of minor forest produce.



F. They have oversight of institutions and functionaries across various social sectors. Next, we see that they have the authority to manage and oversee local development plans, including the tribal sub-plans and their resources. Next, we see that they have the right to provide prior recommendations for granting licenses or leases for mining minor minerals, as well as approvals for auctioning such resources. Moreover, they also have the right to be consulted on matters of land acquisition. And finally, they have the power to issue utilization certificates for government works undertaken in the tribal villages.

i) Right to be consulted on matters of land acquisition.

j) Power to issue utilisation of certificates for government works undertaken in the tribal villages.



So with this, we come to the end of our lecture today. Let us meet with a new topic and another round of discussion in our next lecture. Thank you.

